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Judge Cites Discrimination in N.Y. Fire Dept.

By [AL BAKER](#)

A federal judge ruled on Wednesday that New York City intentionally discriminated against black applicants to the Fire Department by continuing to use an exam that it had been told put them at a disadvantage.

It was not a “one-time mistake or the product of benign neglect,” wrote the judge, Nicholas G. Garaufis of Federal District Court in Brooklyn. “It was a part of a pattern, practice and policy of intentional discrimination against black applicants that has deep historical antecedents and uniquely disabling effects.” A remedy will be decided on later.

In his decision, the judge highlighted how “black and other minority firefighters have been severely underrepresented,” characterizing that as a “persistent stain on the Fire Department’s record.”

City officials said that they intended to appeal the decision, but could not do so until the judge had determined what damages the city might face.

Legal experts, as well as lawyers for the plaintiffs and city officials, said the decision was the first in recent memory in which a court had found that the city had intentionally discriminated against a large group of people — racial minorities or women, for instance — in the workplace.

“I can’t recall there ever being a finding of intentional racial discrimination in a pattern-and-practice case against the city,” said Elise C. Boddie, a professor of constitutional law at New York Law School who formerly litigated employment discrimination cases. “I would say this is pretty big.”

In July, Judge Garaufis — acting on a claim being pushed by the [United States Justice Department](#) — ruled that the Fire Department used a test in 1999 and 2002 that had a discriminatory effect on black applicants.

In his ruling on Wednesday, the judge found that the city intentionally discriminated against blacks in using those tests and in ignoring calls over the years to change the testing procedure. The suit was brought by three people who took the test and by the Vulcan Society, a fraternal organization of black city firefighters.

At the heart of the case is the Fire Department’s persistent underrepresentation of minorities and the continued use, between 1999 and 2007, of the entrance exams. In 2007, there were 303 black firefighters, accounting for 3.4 percent of the department’s ranks; black residents make up 25.6 percent of the city’s population.

The judge noted that while the city’s other uniformed services “have made rapid progress integrating black members into their ranks, the Fire Department has stagnated and at times retrogressed.”

Judge Garaufis stopped short of finding that Mayor [Michael R. Bloomberg](#) and the former fire commissioner, [Nicholas Scoppetta](#), had also intentionally discriminated against black applicants. But the judge wrote that he found strong evidence to suggest that they were made aware numerous times that the Fire Department's entrance exams were discriminatory, yet failed to take sufficient remedial action.

The mayor testified at a deposition in August that he did not recall receiving a report more than six years ago warning him about sharp differences in the pass rates between white and minority candidates for firefighter jobs, lawyers said.

The judge "let the mayor and the commissioner off the hook on the basis of a doctrine known as qualified immunity," said Richard A. Levy, a lawyer for the plaintiffs. He said that doctrine exempts public officials from lawsuits that are based on their discretionary decisions.

The chief of the labor and employment law division of the city's Law Department said in a written statement that she was "pleased" that the court dismissed claims against Mr. Bloomberg and Mr. Scoppetta, but disagreed with the overall finding of intentional discrimination.

"It is the city's view that there is simply no evidence that the city ever intended to discriminate against black applicants," the lawyer, Georgia Pestana, said.

Anjana Samant, a lawyer for the Center for Constitutional Rights, which was part of the team that represented the plaintiffs, said that the class of people involved has been defined as those who were disqualified from becoming firefighters by virtue of the tests. The pool of potential claimants, she said, could reach the hundreds.

Ms. Samant said the remedies could include payment of lost salary for those denied jobs, as well as new city hiring policies.

Some city officials said they found the decision unexpected and deeply perplexing, in part because the judge ruled on plaintiffs' motions for summary judgment and the city's motion to dismiss the case without a trial.

Mr. Levy agreed it was unusual to get a ruling based solely on documentary evidence and depositions, but he said "the evidence of a decades-long pattern of discriminating against black and Latino firefighter applicants was overwhelming."

Ms. Boddie, the New York Law School professor, said such rulings against government entities were rare around the nation, adding, "To the extent there is a finding of liability, it is usually on disparate-impact grounds, not based on racially discriminatory intent."

Paul Washington, 48, a firefighter in Brooklyn and a former Vulcan Society president, said that the ruling validated "what we've been saying for the longest time, and which I've been saying since 1999 — that the Fire Department discriminates, intentionally, and they just continue to do it."

He said he believed that over the department's 145-year history, there were probably "thousands of thousands of black men and women who should have had this job and didn't get it."

Toby Lyles and Michael S. Schmidt contributed reporting.

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